

Service Date: December 16, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Investigation of	)	UTILITY DIVISION
the Sale and Transfer of PacifiCorp's Distribution	)	
System and Public Utility Obligations to	)	DOCKET NO. D98.10.218
Flathead Electric Cooperative, Inc.	)	ORDER NO. 6103b

ORDER ON RECONSIDERATION

Background

1. The Montana Public Service Commission (Commission) issued Order No. 6103a in this Docket No. D98.10.218 on November 2, 1998, approving the terms and conditions of the sale of the distribution facilities of PacifiCorp to Flathead Electric Cooperative, Inc. Order No. 6103a served as the Commission's final approval of the Settlement Agreement preliminarily entered into on October 5, 1998 by counsel for the Commission, PacifiCorp, the Montana Consumer Counsel (MCC) and Flathead Electric. The parties, in entering into the settlement agreement on October 5, 1998, continued the temporary restraining order against the sale and stayed the preliminary injunction proceedings. The Settlement Agreement was modified and finalized on October 8, 1998. Final approval by the Commission resolved the litigation in Cause No. DV-98-437B, Flathead County, Eleventh Judicial District Court, and the court dissolved the temporary restraining order on November 2, 1998 and dismissed the request for injunctive relief.

2. In action at its work session at 10:30 a.m. on October 30, 1998, the Commission approved terms of the Settlement Agreement, determining the negotiated amount of \$4 million as the net gain to be returned to ratepayers. The Commission established a subsequent proceeding, to be scheduled later by Commission staff, to determine the means of distributing the gain.

3. In negotiations after the Commission's initial action, MCC, as co-plaintiff in the lawsuit, would agree to the final court settlement only on allocation of the net gain of \$4 million without further proceedings, \$1.25 million to system improvements in urban areas and \$2.75 to PacifiCorp's residential and small commercial customers. In the afternoon of October 30, 1998, Flathead Electric's counsel and Commission staff further discussed with MCC the terms for settlement of the lawsuit. Flathead Electric referred to the October 8, 1998 Settlement Agreement,

which provided for a separate agreement between the Commission and Flathead Electric on the method of returning the customers' share of the net gain, after final approval of the settlement. Further, in the Process and Decision phase, the Agreement provided that the Commission would conclude the investigation and proceedings and would issue a final decision on whether to accept the settlement and "on such related matters as it deems appropriate." MCC did not change its position on the allocation of the net gain.

4. The Commission reconvened late on October 30, 1998, to address MCC's settlement terms. The Commission's options were either to approve the Settlement Agreement by October 30, 1998 and dismiss the injunction proceeding or not to approve the negotiated settlement agreement and go to court on the preliminary injunction on November 3, 1998. The Commission had determined in the earlier work session that the sale would be in the public interest, that Flathead Electric would provide good, reliable service while assuming the rates of PacifiCorp, and that \$4 million was a reasonable share of the net gain to return to the ratepayers. Since the negotiated amount was no longer at issue, only the determination of how to return it to PacifiCorp's ratepayers, the Commission agreed to MCC's terms to resolve the lawsuit and the investigation. The Commission determined that in the final analysis a settlement of the lawsuit and an expedited sale would promote stability and secure certainty in rates.

5. On November 12, 1998, Plum Creek Timber Company, L.P., and Flathead Electric's regulated affiliate Energy Northwest, Inc. (ENI) filed motions for reconsideration of Order No. 6103a on the issue of determining the allocation of the net gain. One recommendation in common was to conduct further proceedings to determine allocation of the gain. The Department of Environmental Quality filed a Support Brief in support of Plum Creek's and ENI's motions for reconsideration on November 24, 1998, recommending in part an allocation proceeding.

6. On December 1, 1998, MCC filed a Response to Motions for Reconsideration. MCC and Plum Creek also filed a Stipulation and Joint Recommendation on December 1, 1998. MCC's Response stated that the Commission should deny the motions for reconsideration and approve the Stipulation and Joint Recommendation to modify the Order. Their joint proposal would allocate \$1.25 million to distribution system improvements in all of PacifiCorp's service territory, not just the identified urban areas. Of the balance of \$2.75 million, their proposal would allocate \$0.30 million to customers served under Schedule 48T and apportion the re-

maintaining \$2.45 among the residential and commercial customers and loads served under other schedules before July 1, 1998. ENI filed an affidavit in support of its Motion for Reconsideration on December 3, 1998.

7. At its work session on December 3, 1998, the Commission granted the motions for reconsideration to the extent of establishing a contested case proceeding within this Docket to determine the allocation of the \$4 million net gain. Because of this decision, the Commission did not approve the Stipulation and Joint Recommendation. The Commission directed its staff to convene a procedural conference, establish a procedural schedule and set a hearing date.

#### Findings of Fact and Discussion

8. The Commission established Docket No. D98.10.218 to investigate whether the proposed sale and transfer of PacifiCorp's distribution system and public utility obligations to Flathead would be in the public interest. This investigation was a separate proceeding apart from the "Electrical Restructuring Transition Plan Proceeding" in Docket No. D97.7.91; the Commission vacated the hearing on the distribution system sale scheduled for November 30, 1998 in Docket No. D97.7.91, pending the Commission's investigation and decision on the sale.

9. In its recommendation filed on October 28, 1998 as required by the Settlement Agreement, MCC generally stated that there might be positive outcomes from the proposed sale such as local control, efficiencies from combined systems and favorable financing arrangements. MCC stated that the Commission should approve the sale, but recommended that the Commission address rates, the gain on the sale, and transition cost issues. The Commission addressed rates, the gain on the sale and transition cost issues in Order No. 6103a. Relevant to the motions for reconsideration is MCC's recommendation on the net gain.

10. By the date MCC filed its recommendations, MCC noted that parties to the settlement discussions had not yet agreed on how to correctly calculate the net gain over and above the book cost of the assets being sold. MCC recommended that the ultimate net gain, whatever it turned out to be, should be directly returned to PacifiCorp's current ratepayers on the basis of consumption. According to MCC, a portion of the gain could be used to fund distribution system improvements, but there was insufficient information about the potential benefits from various levels of distribution investment to justify directing the gain to this purpose when it commented.

11. The Commission finds that its initial action on the morning of October 30, 1998, to

establish an allocation proceeding was the rational solution to determine how to allocate the gain. Further, the Settlement Agreement anticipated a separate proceeding involving Flathead Electric in which the Commission could determine how Flathead should return this gain to PacifiCorp's customers. In the afternoon of October 30, 1998, MCC stated that its recommendation had been to return all the gain to ratepayers, in support of imposing MCC's late afternoon terms to settle the lawsuit. However, the terms of the Settlement Agreement were that the ratepayers should benefit from half of the net gain, as negotiated by the parties, including MCC.

12. The Commission finds that it made the correct determination in accepting the negotiated net gain of \$4 million on behalf of the ratepayers. No party to this proceeding is now questioning the amount of the gain on reconsideration but rather how it should be distributed. The Commission disagrees with MCC's suggestion in its Response to the Motions for Reconsideration that any change on reconsideration would "unilaterally modify the material terms of its order," in some kind of violation of the spirit of settlement of the lawsuit in Cause No. DV-98-437B in Kalispell. For the purpose of reconsideration, the material term of the order was the return of the net gain of \$4 million to the ratepayers. How the \$4 million will most benefit PacifiCorp's former customers should be determined in a separate process envisioned by that settlement, as the Commission initially decided on the morning of October 30, 1998.

#### Conclusions of Law

1. The Commission incorporates the Conclusions of Law Nos. 1-5 in Order No. 6103a in this Order on Reconsideration, Order No. 6103b.

2. In addition, the Commission has the power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of its powers, including the power to regulate the mode and manner of all investigations and hearings under Title 69, Chapter 3, Montana Code Annotated (MCA).

#### Commission Decision and Order

WHEREFORE THE COMMISSION grants the Motions for Reconsideration, returning to its course of action determined in the work session on October 30, 1998, to establish a contested case proceeding to determine the allocation of the net gain of \$4 million to PacifiCorp's former customers.

DONE AND DATED this 15th day of December 1998 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE:        You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.